

No. 11,450

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

PHILIP B. FLEMING, Temporary Controls
Administrator,

Appellant,

vs.

EUGENE DASHIEL, doing business as Alumi-
num Fabricators,

Appellee.

Upon Appeal from the District Court of the United States
for the District of Oregon.

BRIEF FOR APPELLANT.

WILLIAM E. REMY,

Deputy Commissioner for Enforcement,

DAVID LONDON,

Director, Litigation Division,

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Upon Appeal from the District Court of the United States
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BRIEF FOR APPELLANT.

JURISDICTIONAL STATEMENT.

This is an appeal by the Temporary Controls Administrator from a judgment of the District Court of the United States for the District of Oregon, entered June 3, 1946, giving judgment for the defendant (R. 30) in an action for statutory damages and injunctive relief, under Sections 205 (a) and (e) of the Emergency Price Control Act, as amended, 56 Stat. 23, 765, 58 Stat. 632, 59 Stat. 306, 50 U.S.C. App. Supp. V, Secs. 901 et seq. (hereinafter referred to as the Act). Notice of appeal was filed by the plaintiff on August

28, 1946. (R. 36.) Jurisdiction of the District Court was invoked under Section 205 (a) and (e) of the Act (R. 3) and of this Court under Section 128 of the Judicial Code (28 U.S.C. Sec. 225).

STATEMENT OF THE CASE.

The Inca Metals Company is a manufacturer of cooking griddles. It makes its own aluminum castings and grinds and polishes them to make the finished product. The defendant, who was an employee of Inca, purchased some of their grinding and polishing equipment, and went into business for himself, purchasing castings from Inca and others, and selling them at Inca's ceiling prices.

Maximum Price Regulation No. 188¹ (hereinafter referred to as MPR 188) provided for establishment of maximum prices by reference to the base period experience of the seller. If he had sold the same or a closely similar commodity in March, 1942, his ceiling was to be the highest price charged the same class of customers at that time. If he sold a comparable commodity in the base period, a formula was provided by which the price charged for the comparable commodity could be converted to a ceiling price for the new item. If he did not sell a similar or comparable commodity, Section 1499.158 of MPR 188 provided that his price was to be one "in line with the level of Maximum Prices established by this Maximum Price Regulation No. 188," and was to be determined by

¹Applicable portions of which are reprinted, p. iv, *infra*.

the Office of Price Administration *pursuant to an application* which the seller was required to make before offering the article for sale. However, if the seller was a *transferee of the business* of one who had sold during the base period then, under Section 1499.5 of the General Maximum Price Regulation (incorporated by reference into MPR 188 by Section 1499.151 thereof), the transferor's ceiling price became that of the transferee.

The defendant had not been in business during the base period. He proceeded to sell at Inca's ceiling prices, making no application under Section 1499.158 of MPR 188 to the Office of Price Administration for a ceiling price for himself. After making many such sales, at the request of the local OPA office, he made an application, and an "in line" price was determined by the OPA and promulgated in Order No. 4411.10 Federal Register 11729, issued September 11, 1945. These prices were lower than those at which the defendant had been selling. Nevertheless, he continued to sell at higher prices, apparently contending that he was a true transferee of Inca and that he was entitled to treat Order No. 4411 as invalid and use Inca's prices as his maximum. This action was brought by the OPA for statutory damages and injunctive relief. A pre-trial order was entered into, setting forth as the principal issue in controversy the question whether the defendant was a transferee of Inca's business. At the outset of the trial, however, OPA counsel informed the Court that this understanding had been erroneous, and that the issue of whether the defendant was Inca's transferee went to the validity of

Order No. 4411, and the Court vacated the pre-trial order. (See Supplemental Record.) The defendant continued to contend that the issue of whether he was a transferee was relevant, and introduced evidence to that effect. The Court found that the defendant was such a transferee and entered judgment in his favor. From this judgment, this Appeal has been taken. In the light of the subsequent decontrol of the commodities involved, the Administrator no longer seeks injunctive relief, but desires reversal of the judgment of the Court below in so far as it denies him recovery of statutory damages, under Section 205 (e) of the Act.

SPECIFICATION OF ERRORS.

1. The Court erred in failing to find that the defendant sold cast aluminum griddles in excess of the maximum prices established by the Administrator of the Office of Price Administration in Order 4411 issued under Maximum Price Regulation 188 (F.R. Doc. 45-16919, filed September 11, 1945, 10 F.R. 11729).

2. The Court erred in concluding as a matter of law that the provisions of Section 1499.158 of Maximum Price Regulation 188, under which Order No. 4411 was issued, do not apply to any of the sales made by the defendant.

3. The Court erred in concluding as a matter of law that the defendant did not violate the Emergency Price Control Act of 1942, as amended, and Maximum

Price Regulation 188, as amended, in making the sales complained of.

4. The Court erred in denying plaintiff's prayer for injunctive relief.

5. The Court erred in denying plaintiff's prayer for damages.

ARGUMENT.

The Court below, in holding that the appellee was a transferee of the Inca Metals Company and thereby took over the ceiling prices of the latter, necessarily held invalid the Price Administrator's Order No. 4411. Maximum Price Regulation 188 authorized the issuance of individual dollars-and-cents pricing Orders only when no automatic pricing methods, dependent on base period sales prices, could be used. If the appellee could use the base prices of Inca as his ceiling, the Regulation did not authorize the issuance of Order No. 4411. If so, that Order is invalid.² But any determination by the Court below that Order No. 4411 was invalid was beyond the jurisdiction of that Court. Section 204(d) of the Emergency Price Control Act denies jurisdiction to consider the validity of pricing Regulations or orders to any Court other than the Emergency Court of Appeals. *Yakus v. United States*, 321 U.S. 414, 64 S. Ct. 660; *Bowles v. Willing-*

²The OPA does not concede that the appellee is the transferee of Inca. It is prepared to introduce evidence establishing its position—but not before a court without jurisdiction to resolve the issue upon which that evidence bears, namely, the validity of Order 4411.

ham, 321 U.S. 503, 64 S. Ct. 641; *Taylor v. United States*, 142 F. (2d) 808 (C.C.A. 9), cert. denied, 323 U.S. 723, 65 S. Ct. 56; *Rosensweig v. United States*, 144 F. (2d) 30 (C.C.A. 9), cert. denied, 323 U.S. 764, 65 S. Ct. 117; *Taylor v. Bowles*, 147 F. (2d) 824 (C.C.A. 9).

The appellee contended in the Court below that Order No. 4411 was not applicable. This Order, however, was directed specifically to the defendant and covered the precise articles involved in this action. There was no room for interpretation of the Order or for any contention of inapplicability,³ and in fact the Court below did not hold it to be inapplicable but nevertheless declined to enforce it. Such a refusal to enforce Order No. 4411 is of course tantamount to a declaration of its invalidity. If a Court were empowered to ignore or refuse to give effect to an applicable order, the exclusive jurisdiction provisions of Section 204 (d) of the Act would be meaningless.

Nor can the incidence of Order No. 4411 be evaded in the guise of declaring Section 1499.158 of MPR 188, pursuant to which it was issued, inapplicable. Where an enforcement action is based directly on the Regulation, its interpretation and applicability are of course matters for the enforcement Court; but where

³A similar attempt to evade the exclusive jurisdiction provisions of Section 204 (d) of the Act was rejected by the Circuit Court of Appeals for the Fourth Circuit in *Bowles v. American Brewery Co.*, 146 F. (2d) 842, as follows: "It is argued that the Regulation should be construed as not *applicable* to malt syrup. * * * Since the Regulation covers all commodities not excepted from its provisions and malt syrup is not excepted, the question raised by this argument is simply whether the regulation is *valid* as applied to malt syrup, a question of which the Emergency Court of Appeals has exclusive jurisdiction." (Italics supplied.)

the claim is based upon sales in excess of prices established by an Order issued *under* the Regulation, the interpretation of only the Order is before the Court. The applicability of the Regulation under which the Order is issued is not a question for the enforcement Court to consider, for if that Court determines that the Regulation is inapplicable, it must perforce declare the Order to be invalid. Section 204 (d) is as applicable to issues of whether Order No. 4411 was authorized by MPR 188 as it is to questions of the statutory or constitutional validity of either Order No. 4411 or MPR 188. *Martini v. Porter*, 157 F. (2d) 35 (C.C.A. 9), petition for certiorari filed December 23, 1946; *Porter v. Senderowitz*, F. (2d), 4 OPA Op. & Dec. 2482 (C.C.A. 3, Aug. 19, 1946), petition for certiorari filed Nov. 8, 1946; *Porter v. Eastern Sugar Associates*, (2d), 5 OPA Op. & Dec. 2186 (C.C.A. 4, Jan. 6, 1947).

In *Porter v. Eastern Sugar Associates*, *supra*, an individual pricing Order, quite similar to Order No. 4411 in the instant case, was not applied by the District Court in a treble-damage action, on the ground that the clause of the General Maximum Price Regulation pursuant to which the Order had been issued was not applicable to Puerto Rico, where the sale in question had taken place. This decision was reversed on appeal, the Circuit Court of Appeals for the Fourth Circuit holding that this determination of inapplicability of the basic Regulation constituted an invalidation of an individual pricing order (which specifically covered a Puerto Rico transaction), and that this was a determination beyond the competence

of the District Court. An analogous situation is one in which it is claimed that the statute itself is inapplicable though the Regulation is clearly applicable. There too, it has been held that this contention raises a question of the validity of the Regulation (i.e., its authorization under the Statute) within the meaning of Section 204 (d). As the Supreme Court has said, the Court in an enforcement suit "would not pass on the statutory authority of the Administrator to promulgate the Regulation." (*Case v. Bowles*, 327 U.S. 92, 98, 66 S. Ct. 438, 441.) The Circuit Court of Appeals for the Fifth Circuit similarly observed: "The further contention is made that Texas is not bound to yield to the Regulation because the underlying Act of Congress does not apply to it. This seems to be the equivalent of saying that the Regulation is invalid * * *" *Bowles v. Texas Liquor Control Board*, 148 F. (2d) 265, 266 (C.C.A. 5). See also, to the same effect: *Bowles v. Wheeler*, 152 F. (2d) 34, 38 (C.C.A. 9), cert. denied 326 U.S. 775, 66 S. Ct. 265 (whether the Act "applied" to certain log booming and rafting services); *Cullen v. Bowles*, 148 F. (2d) 621, 624 (C.C.A. 2) (whether the Act "applied" to a Chapter X bankruptcy trustee); *Reeves v. Bowles*, 151 F. (2d) 16 (App. D. C.), cert. denied, 326 U.S. 781, 66 S. Ct. 336 (whether the exemption in the Act for common carriers "applied" to certain taxicab companies).

Likewise, the Emergency Court of Appeals itself has held, where an individual order under one section of a Regulation was attacked on the ground that a prior, automatic section of the Regulation applied in-

stead, that such attack raised an issue of the validity of the individual order, so as to come within its jurisdiction over that issue under Section 204 (d). *Pacific Gas Co. v. Bowles*, 153 F. (2d) 453. And that Court has similarly held that where it is contended that the general Regulation does not apply to a given product, this raises an issue of the validity of the specific Order issued under the Regulation, and hence confers jurisdiction under Section 204 (d) upon that Court. *Conklin Pen Co. v. Bowles*, 152 F. (2d) 764.

In short, when an OPA enforcement action is based upon the claim that sales were made at prices in excess of those determined directly by a section of a Maximum Price Regulation, the construction and applicability of that Regulation are matters for the determination of the enforcement Courts, though its validity is not. But where an individual maximum pricing order has been issued pursuant to a section of a Regulation, which section does not itself establish dollars-and-cents maximum prices but calls for their determination in dollars and cents only by means of the individual Order, it is only the Order itself which may be interpreted, and the Court may not consider the applicability of the Regulation under which it was issued, if the effect thereof will be to declare the individual Order invalid.

CONCLUSION.

The appellee sold at prices which uncontroverted evidence showed to be higher than those designated as maximum prices in an Order specifically applicable

to his sales. The Emergency Price Control Act confers a right in the Administrator to damages based upon such overceiling sales. The Court below refused to award such damages. To carry out the mandate of the Act, it is respectfully submitted that the judgment of the Court below must be reversed.

Dated, February 24, 1947.

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(Appendix Follows.)

Appendix.

Appendix

STATUTES AND REGULATIONS INVOLVED.

1. The Emergency Price Control Act of 1942, as amended (56 Stat. 23, 765, 58 Stat. 632, 59 Stat. 306, 50 U. S. C. App. Supp. V. Secs. 901 *et seq.*).

Section 204(d):

* * * The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

Section 205(e):

If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than

in the course of trade or business may, *within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge; or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than \$25 nor more than \$50, as the court in its discretion may determine: Provided, however, That such amount shall be the amount of the overcharge or overcharges or \$25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull nor the result of failure to take practicable precautions against the occurrence of the violation.*³¹ For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price.³² If any person selling a

³¹As amended by sec. 108 (b) of Stabilization Extension Act of 1944. Formerly read, in place of italicized language:

"* * * bring an action either for \$50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court."

³²Added by sec. 108 (b) of Stabilization Extension Act of 1944.

commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer *either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.*³³ [The amendment made by subsection (b), insofar as it relates to actions by buyers or actions which may be brought by the Administrator only after the buyer has failed to institute an action within thirty days from the occurrence of the violation, shall

³³As amended by sec. 108 (b) of Stabilization Extension Act of 1944. Formerly read, in place of italicized language:

“* * * is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States. Any suit or action under this subsection may be brought in any court of competent jurisdiction, and shall be instituted within one year after delivery is completed or rent is paid. The provisions of this subsection shall not take effect until after the expiration of six months from the date of enactment of this Act.”

*be applicable only with respect to violations occurring after the date of enactment of this Act. In other cases, such amendments shall be applicable with respect to proceedings pending on the date of enactment of this Act and with respect to proceedings instituted thereafter.]*³⁴

2. Maximum Price Regulation No. 188, as amended through September 11, 1945 (10 F. R. 9109) :

§ 1499.151 *Applicability of the General Maximum Price Regulation.* The provisions of §§ 1499.1 to 1499.3, inclusive, and § 1499.18, of the General Maximum Price Regulation shall not apply to sales or deliveries by manufacturers of certain consumers' goods set forth in § 1499.166, Appendix A, of this Maximum Price Regulation No. 188. All other sections of the General Maximum Price Regulation, together with existing and subsequent amendments and supplementary regulations, shall apply to sales and deliveries by such manufacturers, and are hereby incorporated by reference into this Maximum Price Regulation No. 188.

§ 1499.152 *Prohibition against dealing in certain articles of consumers' goods above maximum prices.* (a) On and after August 1, 1942, regardless of any contract or other obligation:

(1) No manufacturer of an article set forth in Appendix A (§ 1499.166) of this Maximum Price Regulation No. 188 shall sell or deliver such article

³⁴Sec. 108 (c) of Stabilization Extension Act of 1944.

at a price higher than the maximum price permitted by the Maximum Price Regulation No. 188:

* * * * *

(c) On and after August 1, 1942, no manufacturer shall sell (including an offer for sale) or deliver any article set forth in Appendix A (§ 1499.166) of this Maximum Price Regulation No. 188 for which a maximum price must be determined under §§ 1499.156, 1499.157, or 1499.158 until he has complied with the reporting and waiting provisions of the applicable one of those three sections.

* * * * *

§ 1499.154 *Maximum prices for articles of consumers' goods not finally priced before August 1, 1942.* This section shall apply to articles first offered for sale before August 1, 1942, for which no maximum price was finally determined, and to all articles first offered for sale on or after August 1, 1942.

The maximum price for any such article shall be the price determined by the first one of the four methods set forth in §§ 1499.155, 1499.156, 1499.157, and 1499.158 which applies to the article.

(Section 1499.155 establishes the first pricing method, to be used where minor changes are not of sufficient importance to affect the maximum;

Section 1499.156 establishes the second pricing method, which provides for changes necessitated by shortages of materials or parts;

Section 1499.157 establishes the third pricing method, which provides for pricing by comparable articles.)

§ 1499.158 *Fourth pricing method; specific authorization by the Office of Price Administration—*

(a) *Maximum prices.* The maximum price for any article which cannot be priced under any of the preceding pricing methods of this regulation shall be the price in line with the level of maximum prices established by this regulation fixed by the Price Administrator or his duly authorized representative. The maximum price will be fixed by an order establishing a maximum price or a method of determining maximum prices.

The order may also establish maximum prices for sales of the article by persons other than the manufacturer. Maximum prices so established for sales by persons other than the manufacturer supersede maximum prices fixed by other regulations for such sales.

(b) *Reports of maximum prices.* Prior to offering such an article for sale, the manufacturer shall submit a report in duplicate applying for the establishment of a maximum price or prices for his sales of the article. In the case of consumers' durable goods listed in paragraph (b) of Appendix A (§ 1499.166), the manufacturer shall submit the report to the District Office of the Office of Price Administration having jurisdiction over the area in which his principal place of business is located.

The report shall contain a description in detail of the article (including the manufacturing process), a statement of the facts which make it necessary to price the article under this section, and the proposed maximum price together with the facts which support the proposed maximum price. If the manufacturer applies for approval of a pricing formula for a line or group of related articles, he shall also include a statement of the pricing formula he proposes for such articles, and the reasons why such a pricing formula will establish maximum prices in line with the level of maximum prices established by this regulation.

The manufacturer shall also submit a sample of the article being priced, if practicable. The sample should not be forwarded, however, until the manufacturer has been advised where to send it. If it is not practicable to submit a sample, the manufacturer shall submit with his application in lieu of a sample, a photograph, blueprint, or other illustration of the article being priced. In addition, the manufacturer shall submit such other relevant information to supplement his report as the Office of Price Administration may require.

Upon issuance of the order by the Price Administrator or his duly authorized representative, the manufacturer may offer the article for sale in accordance with the terms of the order.

[Above two paragraphs amended by Am. 63, 10 F.R. 8699, effective 7-17-45.]

In the case of an article for which a maximum price must be determined under this section for a sale to the United States Government or an Allied Government, the manufacturer shall submit the report required in the above paragraph of this paragraph (b) ten days after the formation of the contract. The manufacturer may at any time offer for sale, sell, or deliver the article at a tentative price, to such government or agency if he informs the purchaser that the maximum price must be determined under this section. In such case he must refund any amounts collected in excess of the price so determined. The price shall remain tentative until the maximum price has been determined in the manner provided in this regulation.

* * * * *

§ 1499.162 *Enforcement.* (a) Persons violating any provisions of this Maximum Price Regulation No. 188 are subject to the criminal penalties, civil enforcement actions, and suits for treble damages provided for by the Emergency Price Control Act of 1942.

* * * * *

1499.163 *Definitions.* (a) When used in this Maximum Price Regulation No. 188, the term:

* * * * *

(2) "Highest price charged during March 1942" means

(i) The highest price which the seller charged to a purchaser of the same class for delivery of the article or material during March 1942; or

(ii) If the seller made no such delivery during March 1942, such seller's highest offering price to a purchaser of the same class for delivery of the article or material during that month; or

(iii) If the seller made no such delivery and had no such offering price to a purchaser of the same class during March 1942, the highest price charged by the seller during March 1942, to a purchaser of a different class, adjusted to reflect the seller's customary differential between the two classes of purchasers:

* * * * *

§ 1499.166 *Appendix A: Articles covered by the regulation.* The following articles of consumer goods shall be covered by this Maximum Price Regulation No. 188:

* * * * *

(8) Commercial kitchen equipment. Commercial and industrial kitchen equipment, irrespective of the type of fuel used, for use in hotels, restaurants, schools, hospitals, industrial and public cafeterias, and similar establishments including:

Ranges.

Broilers, including salamanders and combination types.

Automatic deep fat fryers.

Bain maries.

Roasting ovens.

Baking ovens (sectional and cabinet types).

Baker stoves.

Steam jacketed kettles.

Stock kettles (electric).

Vegetable steamers—commercial.

Steam tables.

Warming ovens.

Plate warmers.

Hot plates.

Griddles.

Automatic egg broilers.

Coffee urns and coffee-making systems.

Toasters—commercial (gas).

Toasters—commercial, over 2 slices (electric).

Dishwashers—commercial.

Glasswashers—commercial.

Silver burnishers.

Mixers.

Choppers.

Slicing machines.

Potato peelers.

Coffee grinders—commercial.

Chopping blocks.

Pot racks.

Pot sinks and vegetable sinks.

Canopies.

Etc.

3. General Maximum Price Regulation (7 F.R. 3153).

§ 1499.5 Transfers of business or stock in trade. If the business, assets or stock in trade of any business are sold or otherwise transferred after April 28, 1942, and the transferee carries on the business, or continues to deal in the same type of commodities or services, in an establishment separate from any other establishment previously owned or operated by him,

the maximum prices of the transferee shall be the same as those to which his transferor would have been subject if no transfer had taken place, and his obligation to keep records sufficient to verify such prices shall be the same. The transferor shall either preserve and make available, or turn over, to the transferee all records of transactions prior to the transfer which are necessary to enable the transferee to comply with the record provisions of this General Maximum Price Regulation.

4. Order No. 4411 (10 F.R. 11729).

[MPR 188, Order 4411]

ALUMINUM FABRICATORS

Approval of Maximum Prices

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register, and pursuant to § 1499.158 of Maximum Price Regulation No. 188; It is ordered:

(a) This order establishes maximum prices for sales and deliveries of certain articles manufactured by Aluminum Fabricators, P. O. Box 463, Lake Grove, Oreg.

(1) For all sales and deliveries to the following classes of purchasers by the sellers indicated below, the maximum prices are those set forth below:

<u>Maximum prices for sales by any seller to—</u>						
	<u>Model No.</u>	<u>Distribu-</u> <u>tors</u>	<u>Whole-</u> <u>salers</u>	<u>Chain &</u> <u>Dept. Stores</u>	<u>Other</u> <u>Retailers</u>	<u>Consu</u>
Alum-	F.	Each	Each	Each	Each	Each
griddle		\$1.80	\$2.00	\$2.40	\$2.67	\$4.00

These maximum prices are for the articles described in the manufacturer's application dated July 24, 1945.

(2) For sales by the manufacturer, the maximum prices apply to all sales and deliveries since Maximum Price Regulation No. 188 became applicable to those sales and deliveries. These prices are f.o.b. factory subject to a cash discount of 2% for payment within 10 days, net 30 days.

(3) For sales by persons other than the manufacturer, the maximum prices apply to all sales and deliveries after the effective date of this order. Those prices are subject to each seller's customary terms and conditions of sale on sales of similar articles.

(4) If the manufacturer wishes to make sales and deliveries to any other class of purchaser or on other terms and conditions of sale, he must apply to the Office of Price Administration, Washington, D. C. under the Fourth Pricing Method. § 1499.158 of Maximum Price Regulation No. 188, for the establishment of maximum prices for those sales, and no sales or deliveries may be made until maximum prices have been authorized by the Office of Price Administration.

(b) The manufacturer shall attach a tag or label to every article for which a maximum price for sales to consumers is established by this order. That tag or label shall contain the following statement:

Model No. F
OPA Retail Ceiling Price \$4.00
Do Not Detach

(c) At the time of, or prior to, the first invoice to each purchaser for resale, the seller shall notify the purchaser in writing of the maximum prices and conditions established by this order for sales by the purchaser. This notice may be given in any convenient form.

(d) This order may be revoked or amended by the Price Administrator at any time.

(e) This order shall become effective on the 12th day of September 1945.

Issued this 11th day of September 1945.

CHESTER BOWLES

Administrator.

[F.R. Doc. 45-16919; Filed, Sept. 11, 1945; 11:11 a.m.]

